



REPUBLIC OF KENYA



**Gitau v Mwadime (Civil Appeal E021 of 2024) [2024] KEHC 9556 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9556 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E021 OF 2024**

**GMA DULU, J**

**JULY 4, 2024**

**BETWEEN**

**BENARD MUCHENE GITAU ..... APPELLANT**

**AND**

**HOLINESS MANDI MWADIME ..... RESPONDENT**

**RULING**

1. Before me is an application by way of Notice of Motion dated 27<sup>th</sup> March 2024 filed under section 3, 3A of the *Civil Procedure Act* (cap.21), and order 42 rule 6 and order 50 rule 5, order 51 rules 1 & 3, and order 22 rule 22 of the *Civil Procedure Rules*, whose prayer are as follows:-
  1. (Spent).
  2. (Spent).
  3. That the court be pleased to grant stay of execution of the judgment/decree in Taveta Civil Suit No. 019 of 2023 (which) was delivered on February 22, 2024 pending hearing and determination of the appeal in Voi High Court Civil Appeal No. E021 of 2024.
  4. That upon grant of prayer No. 3 above, this court be pleased to order that the applicant do provide sufficient security in the form of a suitable Bank Guarantee to secure the judgment herein of Kshs. 242,000/=
2. The application has grounds on the face of the Notice of Motion and was filed with a supporting affidavit sworn by Benard Muchene Gitau the appellant/applicant on 27<sup>th</sup> March 2024 in which it was deponed that an appeal had already been field and that if the stay orders sought are not granted, the appeal will be rendered nugatory.
3. The application was opposed through a replying affidavit sworn by the respondent Holiness Mandi Mwadime on April 3, 2024.



4. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Kimondo Gachoka & Company Advocates for the applicant, as well as the submissions filed by Njoroge Mwangi & Company Advocates for the respondent.
5. This being an application for stay of execution of judgment or decree pending appeal, it is governed by the provisions of order 42 rule 6 of the Civil Procedure Rules, especially rule 6(2).
6. I note that the appeal is from a money decree and the appeal is principally challenging the quantum of damages awarded which are, general damages, KShs. 240,000/= and special damages of KShs. 2,000/=.
7. The judgment herein was delivered on February 22, 2024 and this application filed on March 27, 2024 after appeal was filed.
8. In those circumstances, I find that the application was filed without unreasonable delay.
9. Will the applicant suffer substantial loss if the stay orders sought are not granted? In my view the applicant will suffer substantial loss only if the total decretal amount is paid and then the appeal succeeds and the applicant is not able to recover the whole amount from the respondent.
10. In the circumstances of this case in my view, stay of execution orders can be justified subject to payment of part of the decretal amount to the respondent.
11. With regard to provision of security by the applicant, the applicant has offered to provide a bank guarantee. In my view however, the part payment of the decretal amount to the respondent provides sufficient security.
12. I thus allow the application and order as follows:-
  - a. I grant stay of execution of judgment or decree herein pending determination of appeal.
  - b. The stay orders granted in (a) above is subject to the applicant paying the respondent part of the decretal amount KShs. 85,000/= through counsel within forty five (45) days from today.
  - c. In default of (b) above, the stay orders herein granted will automatically lapse and be of no effect.
  - d. The costs of the application will abide the decision in the appeal.

**DATED, SIGNED AND DELIVERED THIS 4<sup>TH</sup> DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred – Court Assistant

Mr. Nganga for applicant

Mr. Kazungu for the respondent

